Section 3: Interview room recordings

3.1 Deleted (see Service Manual Definitions)

3.2 Interviews

This section outlines the method to be adopted when conducting an interview. Refer also to Chapter 3: 'Prosecution Process' of the Operational Procedures Manual relating to the obligation of officers when compiling briefs of evidence.

The *Police Powers and Responsibilities Act* and Police Responsibilities Code place a number of obligations on officers questioning and interviewing suspects for indictable offences. The provisions of this section are in addition to those statutory obligations.

Requirements for interviewing a person in relation to an indictable offence are stipulated within ss. 414 to 441: 'Safeguards ensuring rights of and fairness to persons questioned for indictable offences' of the *Police Powers and Responsibilities Act*, and ss. 21 to 33: 'Powers and responsibilities relating to investigations and questioning for indictable offences' of the Police Powers and Responsibilities Regulation.

Whenever officers intend to interview a person in relation to a non-indictable offence which may result in the person being charged with an indictable offence, officers should comply with the above mentioned safeguards and responsibilities from the outset.

Guidelines for interviewing a person in relation to an indictable offence (a relevant person) are contained within the Queensland Police Service Interview reference sheet, located in most interview rooms and the Operations Support webpage on the QPS Corporate Intranet (Bulletin Board). Officers should consider applying these guidelines when conducting interview room recordings in relation to non-indictable offences of a serious nature.

3.3 Interview preparation

PROCEDURE

Prior to commencing an interview with a suspect, officers should where possible:

(i) gather, record and understand the facts and circumstances of the matter under investigation;

(ii) read and understand the context of witnesses statements;

(iii) gather available physical evidence;

(iv) gather statements, interviews or other evidence available from co-offenders;

(v) gather available photographs of the scene or victim;

(vi) gather as many facts about the suspect as possible, including criminal history;

(vii) identify any relationship between the suspect and any witnesses;

(viii) consult with previous arresting officers of the suspect;

(ix) note the suspect's dress, appearance and demeanour; and

(x) plan the interview format in terms of information needed to prove or disprove an offence and to negate alibis.

In addition, an officer conducting an investigation should ensure that the interview room is:

(i) clear of unnecessary files or equipment not pertinent to the investigation;

(ii) clear of any material or object which may be used as a weapon;

(iii) private and free from distractions; and

(iv) properly equipped for interviewing purposes.

3.4 Conducting the interview

PROCEDURE

The interview should be commenced with an introduction of all persons involved in the interview and conducted in a professional manner. Officers conducting the interview should clearly:

(i) state the particulars of members present;

(ii) identify the person who will conduct the interview; and

(iii) outline the matter under investigation.

Questions should be asked clearly and should be:

(i) objective;

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(ii) not in the form of cross-examination or leading questions; and

(iii) in common terms, avoiding the use of police jargon.

POLICY

It is not appropriate for an officer to ask suspects leading questions or to cross-examine suspects. Nevertheless, in order to competently interview a suspect, officers may put questions in direct terms and ask further questions designed to clarify any ambiguous answers. Questions should be included to negate possible defences and alibi evidence.

3.5 Interviews using the DERIE system

POLICY

Interviews of relevant persons should, wherever possible, be conducted using the DERIE system.

Officers are to operate the DERIE system in accordance with the Operating Instructions for DERIE.

Where desirable, the DERIE recording system may be used for other departmental purposes, such as the recording of interviews for non-indictable offences or statements from complainants and witnesses.

Prior to the use of the DERIE system, officers should be familiar with the operation and limitations of the equipment.

Upon finalisation of the DERIE interview process, all recordings should be checked by replaying a portion of the DVD recording near the start and conclusion of the interview.

3.6 Electronic recording of interviews – use of external monitoring equipment

External monitoring of interviews conducted in DERIE interview rooms provides a range of benefits to members of the Service. These include:

(i) enhanced safety of staff and other persons involved in the interview process;

(ii) reduced incidence of and limiting of any damage to interview room recording equipment;

(iii) training and monitoring of officers; and

(iv) allowing matters raised during an interview to be checked by a third party without interrupting the interview process.

POLICY

The requirement for external monitoring of interview rooms is to be addressed as part of a station or establishment's risk management strategies.

All DERIE interview room recording equipment is capable of being fitted with external monitoring equipment. The purchase and installation of external monitoring equipment is the responsibility of individual regions and commands.

Regional Radio and Electronics Section members are to consult with the Officer in Charge, Radio and Electronics Section, Brisbane to determine suitable types and availability of external monitoring equipment.

When determining an appropriate site for external monitors, consideration is to be given to the safety, training and operational benefit the monitor will provide, as well as the security of the monitoring equipment.

When an interviewee requests a private conversation (as defined in the *Invasion of Privacy Act*) with:

(i) a legal representative;

(ii) a person acting for an organisation whose primary purpose is to provide legal services; or

(iii) another suitable independent person,

where possible, arrangements are to be made for that conversation to be held in a room where the speech content of the conversation cannot be externally monitored.

Officers are to familiarise themselves with the provisions of s. 3.21: 'Legal representatives at interviews' of this Manual and ss. 42: 'Reference to listening devices and private conversations' and 43: 'Prohibition on use of listening devices' of the *Invasion of Privacy Act*.

Officers in charge of stations and establishments wishing to install external monitoring equipment in DERIE interview rooms are to make application to their assistant commissioner.

ORDER

Officers conducting DERIE interviews are to ensure that a private conversation between the interviewee and another person is not overheard, recorded, or its speech content externally monitored without prior consent of at least one of the parties to the conservation.

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3.7 Testing of equipment used to obtain statements under s. 93A of the Evidence Act

POLICY

Officers in charge of stations and establishments who have recording equipment under their control which is used to obtain statements under s. 93A: 'Statement made before proceeding by child or person with an impairment of the mind' of the *Evidence Act 1977* are to ensure such equipment is tested monthly.

Testing may be completed by recording samples and checking the recorded sounds and images for volume and distortion.

Officers in charge of stations and establishments are to ensure, where relevant, an entry titled 'Malfunction of. s. 93A recording equipment' is in the station's or establishment's risk management plan. The date the equipment was tested is to be recorded under the 'Risk monitoring and review process' column.

Where recording equipment is identified to be producing substandard audio and/or visual recordings, officers in charge of stations and establishments are to ensure that a request for repairs/maintenance is made to the appropriate Radio and Electronic Section as soon as possible.

3.8 Support persons

ORDER

If an officer reasonably suspects a person is:

(i) an adult Aborigine or Torres Strait Islander, and that person has not by a written or electronically recorded waiver, expressly and voluntarily waived his or her right to have a support person present;

(ii) a child; or

(iii) a person with impaired capacity;

the officer must not question the person about his or her involvement in the commission of an indictable offence unless:

(i) a support person is present while the person is being questioned; and

(ii) before questioning starts, the officer has, if practicable, allowed the person to speak to the support person in circumstances in which the conversation will not be overheard.

See ss. 420: 'Questioning of Aboriginal people and Torres Strait Islanders'; 421: 'Questioning of children' and 422: 'Questioning of persons with impaired capacity' of the *Police Powers and Responsibilities Act*; and s. 25: 'Questioning of Aboriginal people and Torres Strait Islanders' of the Police Responsibilities Code.

See also s. 3.19: 'The Anunga Rules – Aboriginals and Torres Strait Islanders' of this Manual and ss. 5.7.12: 'Persons to be present for an interview with a child who is suspected of committing an indictable offence (admissibility of child's statement)' and 6.3: 'General Policy' of the Operational Procedures Manual.

3.9 Ensuring support persons understand their role

ORDER

Before an officer questions a relevant person in the presence of a support person, the officer is to inform the support person of the identity of the relevant person and why the person is being questioned. The officer will provide the support person with a copy of a Form 36: 'Information for support persons about their role' (available on QPS Forms Select). The officer will ensure the support person understands the nature of the support person's role and upon request by the support person provide an explanation of anything relevant to the person's role as a support person (see s. 34: 'Ensuring support persons understand role' of the Police Responsibilities Code).

3.10 Excluding support persons from questioning

ORDER

If an officer reasonably considers a support person present during questioning of a relevant person is unable to properly perform the role of a support person and in the particular circumstances it would be in the interests of the relevant person to exclude the person and arrange for another support person, the officer must exclude the support person from being present during questioning (see s. 427: 'Application of div 5' and 429: 'Police officer may exclude support person from questioning' of the *Police Powers and Responsibilities Act*).

Several examples of circumstances in which a person may be unable to properly perform the role of a support person for a relevant person are outlined in s. 428(3): 'When is a person unable to properly perform the role of a support person' of the *Police Powers and Responsibilities Act*.

PROCEDURE

If an officer excludes a support person from being present during questioning for being unable to properly perform the role, the officer must:

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(i) explain to the support person the reasons for the person's exclusion and the explanation must be written or electronically recorded (see s. 429 of the *Police Powers and Responsibilities Act*);

(ii) comply with the relevant provisions of ss. 426: 'If police officer excludes person from questioning' and 430: 'If police officer excludes support person from questioning of relevant person' of the *Police Powers and Responsibilities Act*; and

(iii) ensure the particular information required in s. 53: 'Exclusions of support persons from questioning' of the Police Responsibilities Code is recorded in the relevant QPRIME Custody Report or Custody Report (Full) and Interview Report (see s. 2.1.2: 'Registers required to be kept' of the Operational Procedures Manual).

A support person can also be excluded from being present during questioning of a relevant person if an officer considers the support person is unreasonably interfering with the questioning (see ss. 420 and 421 of the *Police Powers and Responsibilities Act*). However, before excluding the support person in such circumstances, the officer must:

(i) warn the support person not to interfere with the questioning;

(ii) give the support person one further opportunity to stop unreasonably interfering with the questioning; and

(iii) tell the support person they may be excluded from being present during the questioning if they continue to interfere unreasonably (see s. 425: 'Requirements before excluding persons unreasonably interfering with questioning' of the *Police Powers and Responsibilities Act*).

If an officer excludes a support person from being present because of unreasonable interference during questioning, the officer must:

(i) comply with the relevant provisions of s. 426 of the *Police Powers and Responsibilities Act*; and

(ii) ensure as far as practicable the information required under s. 53 of the Police Responsibilities Code is recorded in the relevant QPRIME Custody Report or Custody Report (Full) and Interview Report (see also s. 2.1.2: 'Registers required to be kept' of Operational Procedures Manual).

3.11 Suspension of interview

POLICY

Where practicable, all suspensions of or interruptions to interviews will be preceded by an announcement of the time and purpose of the suspension or interruption. On resumption of the interview, an announcement is to be made of the time and that the interview is resumed. In accordance with s. 26(4): 'Cautioning relevant persons about the right to silence' of the Police Responsibilities Code, the interviewer must again caution the person when questioning resumes. The interviewer should also include questions to cover what occurred during the suspension of the interview. Where applicable, these questions should indicate any conversation which occurred concerning the particular investigation.

It is strongly recommended that a PRD be used to record any conversations that take place during the suspension of an interview and adopted at the recommencement of the interview as a true and accurate record of conversations conducted during the suspension.

When a time is being referred to during the course of an interview, the person being interviewed should be asked if the time as stated is correct.

Where an interview is suspended for a lengthy period of time, e.g., to travel some distance to a scene of a crime, the suspended interview recording is to be finalised by stopping, finalising and removing the discs. On return to the office situation, the interview should be resumed using new recording media.

Where an interview is suspended for a short period of time, e.g., refreshments, toilet break, the suspended interview should recommence using the recording media used at the time of the suspension.

3.12 Suspension for replay of interview

POLICY

When conducting a DERIE interview, suspension of the interview for either play-back or partial play-back of any portion of the interview should be avoided where possible.

Where investigating officers deem the play-back to be necessary either following a request by the person being interviewed or for the investigating officers' own purposes, the following procedure is to be adopted:

(i) the investigating officers will suspend the interview recording and then finalise and remove the DVD and CD discs after making a suitable announcement as to the reason for suspension of the interview;

(ii) a fresh set of discs are to be inserted into the interview recorder to enable the playback to be recorded. The recording equipment is to be activated;

(iii) the investigating officers are to utilise the police copy of the recording for play-back purposes. e.g. DVD players or Service computers or laptops;

(iv) the interview, including the playback, will be recorded on the fresh set of discs; and

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(v) any comments made by the relevant person with respect to the playback will subsequently be recorded.

3.13 Written records of interview

Section 437: 'Requirements for written record of confession or admission' of the *Police Powers and Responsibilities Act* and s. 30: 'Rights of a person to be electronically recorded' of the Police Responsibilities Code, contain specific provisions relating to written records of interview for indictable offences. The following provisions apply to written records of interview for offences other than indictable offences. Courts may not accept a written record of interview as adopted if the relevant person does not:

(i) read the interview, whether aloud or not, then sign it;

(ii) read it aloud or have it read aloud to them, then state that it is a correct record;

(iii) appear to read it to themselves then state that it is correct; or

(iv) adopt the interview in one of the ways mentioned above through an interpreter.

ORDER

When an officer interviews a relevant person using a written method of recording, that officer is to request that the relevant person adopt the record of interview at the termination of questioning.

PROCEDURE

Where a record of interview has been adopted, officers are to then ask the following questions, and record those questions and the answers provided as a continuation of the record of interview:

(i) Have you read this record of interview?

(ii) Is it an accurate record of our conversation?

(iii) Was any threat, promise or inducement held out to you to get you to take part in this interview?

(iv) Is there anything else that you wish to add, alter or delete?

POLICY

Where a relevant person indicates that the record is inaccurate, the original question is to be re-written and the defendant's answer recorded in full.

ORDER

Officers are to ask the relevant person to sign a written record of interview at the end of the record and endorse the record with the date and time. Officers are to ensure that suspects are warned prior to signing that they need not do so and ask that each page be initialled.

A copy of any adopted written record of interview may be attached to the relevant QPRIME entry.

3.14 Obtaining a receipt for a written record of interview

ORDER

At the conclusion of a written record of interview, the interviewing officer is to give a copy of the record of interview to the relevant person. On doing so, the interviewing officer is to attempt to have the suspect sign a receipt for the copy, regardless of whether the record of interview has been adopted. The receipt is to be typed at the end of the written record of interview on all copies and is to follow a format similar to the following:

'I, (full name of relevant person) received a full and correct copy of this record of interview on (date).'

Officers are to ensure the relevant person is asked to sign the receipt noting their name and the date and time. A copy of the record is to be given to the relevant person regardless of whether or not they have signed the receipt made by the interviewing officer. When the relevant person declines to sign the receipt, the interviewing officer is to make a notation to that effect on the original record.

3.15 Replay of previous interviews and adoption of written interview

POLICY

Where the contents of a previously recorded or written interview is required to clarify or identify points raised in a current interview, the investigating officer/s may replay the previous recording using suitable equipment for that format e.g. PRD, laptop or Service computer, or by way of reading back an adopted written record. Alternatively, the investigating officer/s may verbally advise the relevant person of the points raised in the preceding interview. The playback or verbal advice of the contents of the previous interview should be included within the recording of the current interview.

3.16 Confessions

Refer to s. 437: 'Requirements for written record of confession or admission' of the *Police Powers and Responsibilities Act* and s. 30: 'Rights of a person to be electronically recorded' of the Police Responsibilities Code for specific provisions relating to written records of interview for indictable offences.

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PROCEDURE

Any confession (written or oral) by a defendant is a significant and influential piece of evidence to be presented before the court. Consequently, any confession must be shown by the prosecution to have been made voluntarily by the defendant. Voluntary means more than 'volunteered', and means the defendant made it of their own free will. If the court is of the opinion that the confession was made as a result of threat, promise or inducement, the confessional evidence will likely be excluded. The courts can rule such evidence is unfair to the defendant.

This is particularly important when dealing with children or other people with special needs (refer Chapters 5: 'Children' and 6: 'Special needs' of the Operational Procedures Manual and ss. 420: 'Questioning of Aboriginal people and Torres Strait Islanders', 421: 'Questioning of children', 422: 'Questioning of persons with impaired capacity' and 423: 'Questioning of intoxicated persons' of the *Police Powers and Responsibilities Act*).

In determining whether the defendant exercised their free choice in making the confession, courts will apply the provisions of the *Police Powers and Responsibilities Act*, the Police Responsibilities Code and the Judges Rules to the case. Where these provisions have been shown to have been breached, the evidence is likely to be excluded.

It is advisable that officers when deciding the appropriate time to warn an offender, should err on the side of caution and give warnings early, specifically when interviewing children or other disadvantaged groups.

Oral confessions which are not recorded by means of video or audio should be recorded in an official police notebook as soon as practicable. The suspect should be invited to read the record and if satisfied that it is correct, to adopt it by signing the entry. For indictable offences, officers should also comply with s. 437: 'Requirements for written record of confession or admission' of the *Police Powers and Responsibilities Act*.

3.17 Handwritten confessions

PROCEDURE

Officers who obtain a confession written by a suspect are to type or write at the end of the confession the following questions:

(i) Did you write this statement of your own free will?

(ii) Is this statement true and correct?

(iii) Were you warned prior to making this statement that you did not have to make it?

(iv) Was any threat, promise or inducement held out to you to get you to write this statement?

Officers will request the suspect to answer the questions in writing by placing each of their answers immediately after the question to which it relates, then to sign their name immediately under the last question. Officers are to warn the suspect prior to answering questions that they need not do so.

The suspect will be asked to endorse confessions with the date and time at which it was made.

Handwritten confessions for an indictable offence (made by a person in custody) are to be obtained in compliance with s. 437: 'Requirements for written record of confession or admission' of the *Police Powers and Responsibilities Act* and s. 30: 'Rights of a person to be electronically recorded' of the Police Responsibilities Code.

A copy of any handwritten confessions should be scanned and attached to the relevant QPRIME entry.

3.18 Judges' Rules

POLICY

The Judges' Rules were originally formulated in 1912 by the Judges' of the King's Bench in England. The rules were expanded and developed until 1984 when a new legislative regime was introduced in England. The rules are set out in (1930) 24 Q.J.P. 150.

The Judges' rules were not rules of law but were rules of practice created to provide guidance to police when questioning suspects and the conditions under which the courts would be most likely to admit into evidence statements made by persons suspected of or charged with a crime. The rules provide for standards of fairness to be observed by police officers when questioning suspects.

The application of the Judges' Rules in Queensland is limited. The rules have never had the force of law in Queensland but they have offered guidance to courts in determining whether confessional statements should be admitted into evidence. The rules are therefore regarded as prescribing a standard of fairness to be observed by police officers when questioning suspects and the 'spirit' of the rules should be followed by officers. The courts will use their discretion in deciding whether or not to admit into evidence confessions that have not been obtained in compliance with the Judges' Rules.

For indictable offences, the *Police Powers and Responsibilities Act* and the Police Powers and Responsibilities Regulation have incorporated many of the Judges' Rules into legislation. In Queensland, the rules have limited application in relation to indictable offences.

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In relation to regulatory or simple offences, the standards of fairness provided by the rules still have general application and these standards of fairness should be considered by officers when questioning suspects.

Judges' Rules

Rule One

When a police officer is endeavouring to discover the author of a crime, there is no objection to his putting questions in respect thereof to any person or persons, whether suspected or not, from whom he thinks that useful information can be obtained.

Rule Two

When a police officer has made up his mind to charge a person with a crime, he should first caution such person before asking him any questions, or any further questions, as the case may be.

Rule Three

Persons in custody should not be questioned without the usual caution being first administered.

Rule Four

If the prisoner wishes to volunteer any statement, the usual caution should be administered. It is desirable that the last two words ('against you') of such caution should be omitted, and that the caution should end with the words 'be given in evidence'.

Rule Five

The caution to be administered to a prisoner when he is formally charged should therefore be in the following words:

> 'Do you wish to say anything in answer to the charge? You are not obliged to say anything unless you wish to do so, but whatever you say will be taken down in writing and may be given in evidence.'

Care should be taken to avoid any suggestion that his answers can only be used in evidence against him, as this may prevent an innocent person making a statement which might assist to clear him of the charge.

Rule Six

A statement made by a prisoner before there is time to caution him is not rendered inadmissible in evidence merely by reason of no caution having been given, but in such a case he should be cautioned as soon as possible.

Rule Seven

A prisoner making a voluntary statement must not be cross-examined, and no questions should be put to him about it except for the purpose of removing ambiguity in what he has actually said. For instance, if he has mentioned an hour without saying whether it was morning or evening, or has given a day of the week and a day of the month which do not agree, or has not made it clear to what individual or what place he intended to refer in some part of his statement, he may be questioned sufficiently to clear up the point.

Rule Eight

When two or more persons are charged with the same offence and statements are taken separately from the persons charged, the police should not read these statements to the other person charged, but each of such persons should be furnished by the police with a copy of such statements, and nothing should be said or done by the police to invite a reply. If the person charged desires to make a statement in reply, the usual caution should be administered.

Rule Nine

Any statement made in accordance with the above rules should, whenever possible, be taken down in writing and signed by the person making it after it has been read to him and he has been invited to make any corrections he may wish.

Rule Three was never intended to encourage or authorise the questioning or cross-examination of a person in custody after he has been cautioned, on the subject of the crime for which he is in custody, and long before this rule was formulated, and since, it has been the practice for the Judge not to allow and answer to a question so improperly put to be given in evidence; but in some cases it may be proper and necessary to put questions to a person in custody after the caution has been administered; for instance, a person arrested for a burglary may, before he is formally charged, say, 'I have hidden or thrown the property away,' and after caution he would properly be asked, 'Where have you hidden or thrown it'; or a person, before he is formally charged as a habitual criminal, is properly asked to give an account of what he has done since he last came out of prison. Rule Three is intended to apply to such cases and, so understood is not in conflict with and does not qualify Rule Seven which prohibits any questions upon a voluntary statement except such as is necessary to clear up ambiguity.'

The form of caution in Rule Five is only applicable when the formal charge is made. Before the making of a formal charge the usual caution should be:

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'You are not obliged to say anything, but anything you say may be given in evidence'.

3.19 The Anunga Rules – Aboriginals and Torres Strait Islanders

The Anunga Rules, or more precisely guidelines, emanated from the decision of the Supreme Court of the Northern Territory in 1975 in R.-v-Anunga and others and R.-v-Wheeler and another, 11 ALR 412.

Although this case does not purport to make new rules of law about the interrogation of suspects, it may be said that it lays down guidelines designed to ensure that aboriginal suspects are treated fairly.

POLICY

Whilst the case dealt with the conduct of police officers when interrogating aboriginal persons, the guidelines would apply equally to the interrogation of migrants and other suspects who do not understand the English language very well. Officers are to become conversant with these guidelines to ensure that fairness prevails.

The following sections of the *Police Powers and Responsibilities Act* and the Police Responsibilities Code have, in essence, replaced certain guidelines of the Anunga Rules:

(i) s. 433: 'Right to interpreter' of the *Police Powers and Responsibilities Act*, and s. 28: 'Right to interpreter' of the Police Responsibilities Code have replaced the first guideline;

(ii) s. 418: 'Right to communicate with friend, relative or lawyer' of the *Police Powers and Responsibilities Act*, and s. 23: 'Right to communicate with friend, relative or lawyer' of the Police Responsibilities Code have replaced the second guideline;

(iii) s. 431: 'Cautioning of persons' and section 433: 'Right to interpreter' of the *Police Powers and Responsibilities Act*, and s. 26: 'Cautioning relevant persons about the right to silence' of the Police Responsibilities Code have replaced the third guideline;

(iv) s. 423: 'Questioning of intoxicated persons' of the *Police Powers and Responsibilities Act* has replaced the seventh guideline;

(v) s. 420: 'Questioning of Aboriginal people or Torres Strait Islanders' of the *Police Powers and Responsibilities Act* and s. 25: 'Questioning of Aboriginal people or Torres Strait Islanders' of the Police Responsibilities Code have replaced the eighth guideline; and

(vi) s. 630: 'Protecting the dignity of persons during search' of the *Police Powers and Responsibilities Act* has replaced the ninth guideline.

Where appropriate, these legislative provisions are to be complied with (see also Chapter 6: 'Special Needs' of the Operational Procedures Manual).

The guidelines:

(i) when an aboriginal person is being interrogated as a suspect, unless he is as fluent in English as the average white man of English descent, an interpreter able to interpret in and from the aboriginal person's language should be present, and his assistance should be utilised whenever necessary to ensure complete and mutual understanding;

(ii) when an aboriginal is being interrogated it is desirable where practicable that a 'prisoner's friend' (who may also be the interpreter) be present. The 'prisoner's friend' should be someone in whom the aboriginal has apparent confidence. He may be a mission or settlement superintendent or a member of the staff of one of these institutions who knows and is known by the aboriginal. He may be a station owner, manager or overseer or an officer from the Department of Aboriginal and Torres Strait Islander Policy. The combinations of persons and situations are variable and the categories of persons I have mentioned are not exclusive. The important thing is that the 'prisoner's friend' be someone in whom the aboriginal has confidence, by whom he will feel supported;

(iii) great care should be taken in administering the caution when it is appropriate to do so. It is simply not adequate to administer it in the usual terms and say, 'Do you understand that?' or 'Do you understand you do not have to answer questions?' Interrogating police officers, having explained the caution in simple terms, should ask the aboriginal to tell them what is meant by the caution, phrase by phrase, and should not proceed with the interrogation until it is clear the aboriginal has apparent understanding of his right to remain silent. Most experienced police officers in the Territory already do this. The problem of the caution is a difficult one but the presence of a 'prisoner's friend' or interpreter and adequate and simple questioning about the caution should go a long way towards solving it;

(iv) great care should be taken in formulating questions so that so far as possible the answer which is wanted or expected is not suggested in any way. Anything in the nature of cross-examination should be scrupulously avoided as answers to it have no probative value. It should be borne in mind that it is not only the wording of the question, which may suggest the answer, but also the manner and tone of voice which are used;

(v) even when an apparently frank and free confession has been obtained relating to the commission of an offence, police should continue to investigate the matter in an endeavour to obtain proof of the commission of the

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offence from other sources. Failure to do this, among other things, led to the rejection of confessional records of interview in the cases of Nari Wheeler and Frank Jagamala;

(vi) because aboriginal people are often nervous and ill at ease in the presence of white authority figures like policemen it is particularly important that they be offered a meal, if they are being interviewed in a police station, or in the company of police or in custody when a meal time arrives. They should also be offered tea or coffee if facilities exist for preparation of it. They should also be offered a drink of water. They should be asked if they wish to use the lavatory if they are in the company of police or under arrest;

(vii) it is particularly important that aboriginal and other people are not interrogated when they are disabled by illness or drunkenness or tiredness. Admissions so gained will probably be rejected by a court. Interrogation should not continue for an unreasonable long time;

(viii) should an aboriginal seek legal assistance reasonable steps should be taken to obtain such assistance. If an aboriginal states he does not wish to answer further questions or any questions the interrogation should not continue; and

(ix) when it is necessary to remove clothing for forensic examination or for the purposes of medical examination, steps must be taken forthwith to supply substitute clothing.

3.20 Whereabouts of persons being interviewed to be disclosed

ORDER

Members are not to withhold or conceal the whereabouts of persons being interviewed from those who have a legitimate interest in the welfare of that person. People who may be considered as having legitimate interests include family, bona fide friends and solicitors who have been retained to represent the relevant person.

PROCEDURE

Members who receive an inquiry from a person with a legitimate interest in the welfare of the relevant person as to the whereabouts of that person are to make inquiries and give reasonable assistance to the inquirer in order to locate the person.

Reasonable assistance may include:

(i) inquiries via the Service communications network;

(ii) telephone inquiries;

(iii) personal inquiries; and/or

(iv) QPRIME inquiries.

ORDER

With respect to inquiries as to the whereabouts of a person detained for an indictable offence, members are to comply with the provisions of s. 432 of the *Police Powers and Responsibilities Act*, and s. 27 of the Police Responsibilities Code, both of which are titled: 'Provision of information relating to a relevant person', and s. 16.8.6: 'Inquiries as to the location of a person suspected of being in custody' of the Operational Procedures Manual.

3.21 Legal representatives at interviews

ORDER

In addition to the provisions of this section, officers, with respect to persons being questioned or who have been arrested for questioning or investigations for an indictable offence, are to comply with the provisions of s. 418 of the *Police Powers and Responsibilities Act*, and s. 23 of the Police Responsibilities Code, both of which are titled: 'Right to communicate with friend, relative or lawyer' (see also s. 2.14.12: 'Investigation and questioning – Accountability' and Chapter 6: 'Special Needs' (in particular ss. 6.3 to 6.3.11) of the Operational Procedures Manual).

POLICY

Officers are to allow suspects being interviewed to contact a legal representative upon request. Access to a telephone is to be provided, and, if necessary a regional lawyer list or telephone directory (see s. 23(4) and (5) of the Police Responsibilities Code).

PROCEDURE

When a legal representative, whether qualified or not, attends at a police station or establishment for the purpose of obtaining access to a suspect who is being interviewed, the member who is approached by the legal representative should:

(i) request proof of the legal representative's identity;

(ii) request the name of the person who asked the legal representative to attend;

(iii) establish whether the relevant suspect is being interviewed and that suspect's location;

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(iv) where the legal representative is at the station or establishment where the suspect is being interviewed, immediately advise the officer who is responsible for interviewing the suspect that the legal representative is in attendance; and

(v) where the legal representative is in attendance at a place other than the station or establishment where the suspect is being interviewed, advise the legal representative of the suspect's location.

Interviewing officers who are advised of the presence of a legal representative, should ensure that the legal representative is immediately located and accompanied to the suspect. Officers should confirm that the suspect desires the services of the legal representative concerned and the specific conversation to this effect should be recorded, preferably electronically. If the suspect does not desire the services of the legal representative, a request should be made for that legal representative to leave.

Members should ensure that the legal representative and the suspect are afforded the opportunity to consult with each other. During any such consultation, members should position themselves so as to be able to observe both the legal representative and the suspect, but not to overhear any conversation, see s. 419: 'Speaking to and presence of friend, relative or lawyer' of the *Police Powers and Responsibilities Act*.

ORDER

Officers are not to record, or cause to be recorded, privileged conversations between suspects and their legal representatives.

3.22 Investigations and questioning (Accountability)

The *Police Powers and Responsibilities Act* and the Police Responsibilities Code provide officers with arrest/detention powers and guidelines to assist them in investigations and questioning of persons in relation to indictable offences. These legislative provisions require officers to strictly adhere to processes to ensure that persons' liberties are not interfered with; their needs are met; and their rights are protected.

Relevant provisions contained in the *Police Powers and Responsibilities Act* include:

(i) Chapter 15 (ss. 396 to 441): 'Powers and responsibilities relating to investigations and questioning for indictable offences';

(ii) Chapter 16 (ss. 442 to 444): 'Search powers for persons in custody';

(iii) Chapter 17 (ss. 445 to 536): 'Forensic procedures'; and

(iv) Chapter 18 (ss. 537 to 548): 'Blood and urine testing of persons suspected of committing sexual or other serious assault offences'.

Relevant provisions contained in the Police Responsibilities Code include:

(i) Part 5 (ss. 21 to 34): 'Powers and responsibilities relating to investigations and questioning for indictable offences'; and

(ii) Part 6 (ss. 35 to 43): 'Responsibilities relating to persons in custody'.

Chapter 15, Part 2: 'Investigations and questioning' of the *Police Powers and Responsibilities Act* applies to a person who:

(i) is lawfully arrested for an indictable offence; or

(ii) is in lawful custody for an offence that has not been decided; or

(iii) is in lawful custody under a sentence for a term of imprisonment or, for a child, a detention order.

For these provisions to apply, at the time of affecting the arrest, the person is to be advised by the arresting officer of the reason for the arrest (namely the indictable offence for which the arrest is made). Not that the person is 'under arrest for the purpose of questioning or investigation'.

In Clarke v Bristow (Brisbane District Court No. 37 of 2000, 17 November 2000) it was found that the arrest of Clarke was unlawful as the arrest was made 'for the purposes of questioning' not for the indictable offence (of robbery).

POLICY

Where a person is in the company of a police officer for the purpose of being questioned as a suspect about his or her involvement in the commission of an indictable offence, in addition to complying with the applicable provisions of the *Police Powers and Responsibilities Act*, Police Responsibilities Code, the Operational Procedures Manual and this Manual, the officer who has custody of the person is to advise:

(i) the officer's supervisor where available; or

(ii) where the supervisor is not available at the place where the person in custody is taken to, the officer for the time being in charge of that place who is then there present;

as soon as reasonably practicable following the start of the detention period (for when the detention period starts see s. 403(5): 'Initial period of detention for investigation or questioning' of the *Police Powers and Responsibilities Act*).

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The advice to the supervisor is to include:

(i) the identity and nationality of the person in custody if known;

(ii) whether the person in custody is an Aborigine or Torres Strait Islander;

(iii) whether the person in custody is a child;

(iv) whether the police officer reasonably suspects that the person in custody is unable, because of inadequate knowledge of the English language or physical disability, to speak with reasonable fluency in English; and

(v) the offence(s) for which the person in custody is to be interviewed.

A supervisor or officer in charge who has been advised in compliance with this policy is to ensure that the provisions of the *Police Powers and Responsibilities Act*, the Police Responsibilities Code, the Operational Procedures Manual and this Manual are complied with.

Wherever practicable, the supervisor or officer in charge is to personally speak with the person in custody and ensure that the provisions of the following sections of the *Police Powers and Responsibilities Act*, as applicable, are complied with:

(i) s. 403: 'Initial period of detention for investigating or questioning';

(ii) s. 405: 'Application for extension of detention period';

(iii) s. 418: 'Right to communicate with friend, relative or lawyer';

(iv) s. 420: 'Questioning of Aboriginal people and Torres Strait Islanders';

(v) s. 421: 'Questioning of children';

(vi) s. 422: 'Questioning of persons with impaired capacity';

(vii) s. 423: 'Questioning of intoxicated persons';

(viii) s. 431: 'Cautioning of persons';

(ix) s. 433: 'Right to interpreter';

(x) s. 434: 'Right of visiting of foreign national to communicate with embassy etc.';

(xi) s. 435: 'Rights of a person to be electronically recorded'; and

(xii) s. 436: 'Recording of questioning etc.'.

3.23 Questioning persons voluntarily 'in custody'

POLICY

Chapter 15, Part 2 (ss. 398-413): 'Investigations and Questioning' of the *Police Powers and Responsibilities Act* does not apply to persons other than those mentioned in s. 398: 'Application of pt 2' of the *Police Powers and Responsibilities Act*.

However, the provisions of Part 3 (ss. 414-441): 'Safeguards Ensuring Rights of and Fairness to Persons Questioned for Indictable Offences' of the *Police Powers and Responsibilities Act* and Part 5, Division 1 (ss. 21-31): 'Questioning relevant persons about indictable offences' of the Police Responsibilities Code apply.

Consequently there is no statutory limit imposed on the length of time a person may be questioned who is voluntarily in the company of a police officer for the purpose of questioning as a suspect for an indictable offence.

3.24 Changing of discs

POLICY

The QPS interview equipment is programmed to record for two hours. After this time period all discs are finalised and new discs must be inserted into each drive to continue the interview. The equipment provides an audible double beep when recording has commenced and the word 'Recording' is displayed on the screen together with microphone VU meters.

An announcement should be made by the investigating officer indicating that the discs have almost expired and that it is necessary to change them. The announcement should include the time and date. On resumption of the interview with new media, a brief announcement should be made by the investigator indicating the interview is a continuation of the interview between both the named investigating officers and the named relevant person.

The announcement should include the sequence number of the disc, e.g., "this is disc No. two", and the date and time of the resumption of that portion of the interview. Conversation relevant to the interview should not take place during the changing of media. Investigating officers should include appropriate questioning to confirm this position upon the resumption of the interview.

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3.25 Multiple offences

POLICY

Investigating officers should use one disc or a series of discs, for each interview relating to each separate offence subject to the following exception.

Where a relevant person is being interviewed in relation to a series of offences and the investigating officers intend joining the resultant charges, the investigating officers may include those interviews in a continuing sequence on the discs.

Investigating officers are reminded that fresh warnings should be given before questioning commences in relation to separate offences.

3.26 Relevant person agrees to be interviewed but not electronically recorded

POLICY

Every interview should commence with the electronic recording equipment operating. If the relevant person declares a willingness to be further interviewed, but not electronically recorded, the investigating officers will explain to the relevant person that interviews must, if practicable, be electronically recorded. If the relevant person persists in refusing to have the interview electronically recorded, the investigating officers will endeavour to obtain the relevant person's reasons for the refusal on the electronic recording.

If the relevant person is adamant in insisting the interview not be electronically recorded, the investigating officer will proceed with the interview by means of a typed record of interview or by some other means of contemporaneously recording the interview. For a typed or handwritten interview, the relevant person should adopt each page with his/her signature, time and date. The investigating officers should attempt to electronically record the relevant person's agreement that the interview was recorded other than electronically and include questioning confirming the relevant person does not want the interview to be electronically recorded. If possible the adoption of the interview should be electronically recorded.

3.27 Malfunction of equipment

A malfunction of the recording system may occur prior, during, or be detected subsequent to the interview process.

POLICY

When DERIE equipment malfunctions either prior to the commencement of any interview with a relevant person, the interview should be conducted as soon as practicable using other electronic recording equipment. If other electronic recording equipment is not available (or subsequently also fails), the interview should be recorded by way of a typed record of interview or by other means of contemporaneously recording the interview. An explanation of the malfunction should be included in the recommenced interview. At the conclusion of the interview, the relevant person or any other person(s) involved should be invited to endorse the recording (see also s. 3.31: 'Certification of the unavailability of equipment,' of this Manual).

Any damaged recordings are to be retained.

PROCEDURE

When DERIE equipment malfunctions during the course of interview, an audible warning is provided indicating a fault in the recorder. A screen prompt will advise of the nature of the fault e.g. 'video failure' or 'microphone failure'.

Upon identifying a malfunction with the recording device during the course of the interview, the investigating officer should:

(i) follow the DERIE system screen prompts e.g. 'insert another set of discs'; or

(ii) recommence the interview on other equipment explaining what has happened during the subsequent interview.

If at the conclusion of the interview, all recordings have failed, recommence the interview on other equipment explaining what has happened during the subsequent interview. If it is not possible to re-interview, the failed recording may be able to be recovered from the system hard drive. Under these circumstances or if any recorder faults occur, contact should be made with the local Radio and Electronics workshop. In all instances the original failed media is to be retained.

3.28 Replies or statements made by relevant person following receipt of a copy of the interview recording or on being charged

POLICY

Any comments or statements made by the relevant person on receipt of a copy of a recording, or on being charged should be noted and subsequently given in evidence.

Where a comment or statement made by the relevant person is of sufficient importance to give rise to further questioning, the investigating officer will decide, considering the particular circumstances, whether or not a further electronically recorded interview should be conducted.

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3.29 Receipt by relevant person of copy of the interview recording

POLICY

There is no requirement to have the relevant person sign a receipt for a copy of an electronically recorded interview.

The investigating officer may have the relevant person sign or initial the labels of the discs or tapes.

At the investigating officers' discretion, the relevant person may sign a notation in the officer's notebook or elsewhere acknowledging receipt of the relevant person's copy of the electronically recorded interview.

In cases where the relevant person is arrested and charged, the relevant person's copy of any interview recording will be recorded with other personal property, which will support receipt of the interview recording.

3.30 Where equipment does not immediately produce a copy for an interview with a relevant person

ORDER

When an interview with a relevant person occurs and the recording equipment does not immediately produce a copy of the recording for the relevant person, the investigating officer must make arrangements for delivery of a copy of the recording to the relevant person within seven days. It will be necessary for the investigating officer to copy the original recording for this purpose (see also s. 438: 'Access to electronic recordings of questioning etc.' of the *Police Powers and Responsibilities Act*).

3.31 Certification of the unavailability of equipment

POLICY

Where an interview with a relevant person is unable to be electronically recorded because of the unavailability of equipment, a QPB47: 'Interview unable to be electronically recorded' (available on QPRIME) must be issued by a commissioned officer as to the unavailability of the equipment.

Prior to issuing the certificate, the commissioned officer must be satisfied as to the unavailability of the equipment.

Where a certificate is required as to the unavailability of equipment, the interviewing officer should obtain the certificate at the time of the unavailability and prior to the commencement of the interview.

Where circumstances exclude the obtaining of a QPB47, the circumstances will be outlined and explained in the relevant record of interview with the QPB47 obtained as soon as practicable thereafter.

The QPB47 should be completed by the interviewing officer and entered against the relevant occurrence.

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